

BEFORE THE HEARING EXAMINER

Notice and Statement of Appeal

Date: February 8, 2010

Case Number: E1000334

Address of Violation:

31001 144th Avenue SE

Kent, WA 98042

Appeal of:

ProFormance Racing School

Name P.O. Box 791

Address Bellevue, WA 98009

City State Zip

(253) 630-5130

Telephone Number

Statement of the legal interest(s) of each of the appellant(s) in the building, structure, premises or land:

Appellant has a building on land leased from the owner of Pacific Raceways and operates the ProFormance Racing School.

Statement or attached copy of the specific order or action of the Department of Development and Environmental Services that is protested:

Copy of Notice and Order is attached.

Statement of grounds why such order or action is unjust or unlawful:

See Attachment A.

Statement of material facts in support of each ground stated:

See Attachment A.

Statement of the relief sought, including specific nature and extent:

Determine that there have been no violations.

Signature(s) of Appellant(s):

Cairncross & Hempelmann

Donald E. Marcy

Attorneys for ProFormance Racing School

Official Mailing Address:

524 Second Ave., Ste. 500

Seattle, WA 98104

Please return this form to:

King County Department of Development and Environmental Services
Attn: Code Enforcement Section
900 Oakesdale Avenue Southwest
Renton, WA 98057-5212

NOTE: In accordance with KCC 20.24.090, the appeal must state with specificity the decision being appealed and the reason why the appealed decision should be reversed or modified. FAILURE TO RESPOND WITH SPECIFIC REASONS MAY RESULT IN A MOTION TO HAVE THE APPEAL DISMISSED BY THE HEARING EXAMINER.

ATTACHMENT A

Grounds Why Order is Unjust or Unlawful.

1. King County is changing its interpretation of what activities are allowed on the “quiet days” at Pacific Raceways.
2. The doctrine of equitable estoppel requires that the County not be allowed to change its interpretation of allowed activities on “quiet days.”
3. The alleged violations are vague and ambiguous.
4. Appellant has not violated the conditions of the Conditional Use Permit under which Pacific Raceways operates.

Material Facts.

1. In 1989, King County specifically authorized instructional driving schools to operate on “quiet days.”
2. In 1992, King County specifically authorized instructional driving schools to operate on “quiet days.”
3. Appellant began operations at Pacific Raceways in 1994, and King County has not asserted, until January 21, 2011, that instructional driving schools are not permitted to operate on “quiet days.”
4. Appellant’s instructional driving school operation has no spectators; uses muffled, street legal vehicles; and does not create noise above the ambient noise levels in areas around Pacific Raceways.
5. Appellant does not operate on weekends at Pacific Raceways.
6. Noise tests conducted in 1992, when the Skip Barber Racing School was operating at Pacific Raceways, concluded that the noise levels from the track on “quiet days” were within the ambient noise levels of the surrounding residential neighborhoods.
7. Appellant has relied on King County’s interpretation of allowed “quiet day” activities by investing in the development of an instructional driving school at Pacific Raceways.
8. Appellant will suffer economic injury if it is not allowed to operate on the “quiet days” at Pacific Raceways.
9. If King County is not estopped from changing its interpretation and disallowing Appellant’s operation, Appellant will not be able to operate.

10. Invoking estoppel against King County will not impair government functions as the “quiet days” requirement is a conditional use permit condition and is not a zoning code requirement.

KING COUNTY
DEPARTMENT OF DEVELOPMENT
AND ENVIRONMENTAL SERVICES
Land Use Services Division
Code Enforcement Section
900 Oakesdale Avenue Southwest
Renton, WA 98057-5212

V.

Race Track LLC
P.O.Box 31529
Seattle WA 98103

Race Track LLC
c/o Mr. J. Dan Fiorito, Jr.
2505 N. Northlake Way
Seattle WA 98103

Pacific Grand Prix LLC
c/o Mr. Paul Zalud
3612 216th Dr. SW
Brier, WA 98036

Mr. Don Kitch
ProFormance Racing School
6841 Lake Washington Blvd
Newcastle WA 98056-1012

NOTICE OF KING COUNTY CODE
VIOLATION: CIVIL PENALTY
ORDER: ABATEMENT ORDER: DUTY
TO NOTIFY

CASE NUMBER: E1000334

ZONING: I-P, RA-5

ADDRESS: 31001 144th AVE SE

ACCOUNT: 1021059002, 1021059003, 1021059008, 1021059019, 1021059029, 1121059035

LEGAL DESCRIPTION:

Parcel: 1021059002

QSTR NE 10-21-05

NW 1/4 OF NE 1/4 LESS POR SOLD N P RY CO 11-22-18

AND

Parcel: 1021059003

QSTR NE 10-21-05

UND 1/2 INT IN FOLG S 1/2 OF NE 1/4 & N 1/2 OF N 1/2 OF NE 1/4 OF SE 1/4

AND

Parcel: 1021059008

QSTR NW 10-21-05

UND 1/2 INT IN FOLG POR OF SE 1/4 OF NW 1/4 LY SELY OF ST HWY POR OF E 1/2
OF SW 1/4 LY NLY OF NP R/W & POR OF W 1/2 OF SW 1/4 LY NLY OF NP R/W & ELY
OF LN BEG AT PT ON NLY LN OF R/W WCH IS 932.39 FT N & 1400.31 FT W OF S 1/4
COR OF SEC TH N 36-21-40 W 393.89 FT TH N 28-23-10 W 157.52 FT TH N 32-49-10 E
146.04 FT TH N 01-34-40 E 22.90 FT TH N 00-58-00 E 276 FT TH N 21-48-20 E 127.88 FT
TH N 17-49-30 E 142.02 FT TH N 42-38-00 E 215.45 FT TH N 13-36-30 E TO E LN SD
SUBD - LESS POR FOR RD/ STORMWATER TREATMENT AREA

AND

Parcel: 1021059019

QSTR SE 10-21-05

NW 1/4 OF SE 1/4 LESS R R R/W LESS POR LY SLY OF R R R/W

AND

Parcel: 1021059029

QSTR SE 10-21-05

S 3/4 OF NE 1/4 OF SE 1/4 LESS N P R/W

Parcel: 1121059035

QSTR SW 11-21-05

POR OF N 1/2 OF SW 1/4 LY NLY OF N P R/W & WLY OF LN BEG ON NLY LN OF SD
R/W 50 FT NLY, MEAS AT R/A, FR PT ON C/L OF MAIN TRACK 2072.5 FT, MEAS ALG
SD C/L, FR W LN OF SEC TH NELY TO NE COR SD SUBD

YOU HAVE BEEN FOUND TO HAVE COMMITTED A CIVIL CODE VIOLATION AND
TO BE A PERSON RESPONSIBLE FOR CODE COMPLIANCE, AND YOU ARE HEREBY
NOTIFIED AND ORDERED PURSUANT TO KING COUNTY ORDINANCE 14309, AS
AMENDED, OF THE FOLLOWING:

CIVIL CODE VIOLATIONS (Including KCC Section 23.02.010B):

The King County Department of Development and Environmental Services has found the above-described location is maintained or used in violation of the King County Code (KCC).

THEREFORE, YOU ARE ORDERED TO CORRECT VIOLATIONS LISTED BELOW IN ACCORDANCE WITH LISTED CODE PROVISIONS AND CODES ADOPTED UNDER THE AUTHORITY OF TITLE 16 OF THE KING COUNTY CODE AS AMENDED BY ORDINANCE 15802 AND INCLUDING BUT NOT LIMITED TO CHAPTER 21A.50 AND TITLE 23 OF THE KING COUNTY CODE; REVISED CODE OF WASHINGTON (RCW) 19.27.020, 19.27.031, 19.27.040, 19.27.074, AND THE WASHINGTON ADMINISTRATIVE CODE (WAC) 51-40-003:

1. Failure to comply with the conditions of King County Conditional Use (CUP) Permit A-71-0-81, April 30, 1984 Rules and Procedures, and violation of Sections 21A.02.040(A), 21A.08.100, and 21A.42.190(A), of King County Code (K.C.C.). Specifically:
 - A. Use of primary Race Track for race-related functions on required quiet days in violation of permit conditions 1A and B, including but not limited to operation of ProFormance Racing School and use of the track by private vehicles for "lapping". DDES alleges that Race Track LLC knowingly permits uses on required quiet days which are race-related, are not quiet, and are not "non-impacting" in violation of the plain language of Conditional Use Permit A-71-0-81, 1984 Rules and Procedures.
 - B. Use of shift kart track by vehicles other than shift karts, including but not limited to motorcycles and street legal automobiles in violation of permit condition 15 requiring all improvements and uses to be conducted in accordance with the pre-March 31, 1984 plot plan.
 - C. Exceeding permitted limits regarding hours of operation by periodically operating past required closing times.

TO BRING THIS PROPERTY INTO COMPLIANCE

1. Comply with all conditions of Permit A-71-0-81 including:
 - A. Cease all racing and performance driving school operations and any other race-related functions, including any and all racing, lapping, or similar uses of private vehicles on required quiet days by **February 21, 2011**.
 - B. Cease all non-shift kart use of the shift kart track by **February 21, 2011**.
 - C. Cease all operation outside permitted hours of operation by **February 21, 2011**.

**** ANY PERMITS REQUIRED TO PERFORM THE CORRECTIVE ACTION MUST BE OBTAINED FROM THE PROPER ISSUING AGENCY.** Some permit applications require appointments, which may be several weeks out.

FAILURE TO COMPLY WITH THIS NOTICE AND ORDER MAY SUBJECT YOU TO ADDITIONAL CIVIL PENALTIES, ABATEMENT AND/OR MISDEMEANOR ACTIONS, AND COULD LEAD TO THE DENIAL OF SUBSEQUENT KING COUNTY PERMIT APPLICATIONS ON THE SUBJECT PROPERTY.

CIVIL PENALTY/NOTICE OF LIEN (Including KCC Section 23.24.070):

You shall correct each violation by the above dates or you will incur daily civil penalties against you according to the following schedule:

Violation 1: \$80.00 per day for the first 30 days, then \$160.00 per day for each day thereafter.

This Department shall periodically bill you for the amount incurred up to and through the date of billing. PERIODIC BILLS ARE DUE AND PAYABLE 30 DAYS FROM RECEIPT. If any assessed penalty, fee or cost is not paid on or before the due date, King County may charge the unpaid amount as a LIEN against the real property of all persons responsible for code compliance and as a JOINT AND SEVERAL PERSONAL OBLIGATION of all persons responsible for code compliance.

CRIMINAL MISDEMEANOR/NON-COMPLIANCE WITH FINAL ORDER (KCC Section 23.02.030):

Any person who willfully or knowingly causes, aids or abets a civil code violation by any act of commission or omission is guilty of a misdemeanor. Upon conviction, the person shall be punished by a fine of not to exceed one thousand dollars and/or imprisonment in the County jail for a term not to exceed 90 days. Each week (7 days) such violation continues shall be considered a separate misdemeanor offense. Failure to corrected cited violations may lead to denial of subsequent King County permit applications on the subject property.

NOTIFICATION OF RECORDING (KCC Section 23.24.040):

A copy of this Notice and Order shall be recorded against the property in the King County Office of Records and Elections. King County shall file a Certificate of Compliance when the property is brought into compliance.

ABATEMENT WORK/NOTICE OF LIEN (Including KCC Section 23.40.030 and RCW 35.80.030.1H):

King County may proceed to abate the violation(s) and cause the work to be done, and charge the costs thereof as a lien against the real property of all persons responsible for code compliance and as a joint and several personal obligation of all persons responsible for code compliance.

APPEAL (Including KCC Chapter 23.36):

Any person named in the Notice and Order or having any record or equitable title in the property against which the Notice and Order is recorded may appeal the order to the Hearing Examiner of King County. A notice of appeal must be received in writing by DDES within fourteen (14) days by February 9, 2011 and a statement of appeal must be received in writing by DDES within twenty-one (21) days by February 16, 2011 of the date of service of the Notice and Order. A form which includes a combined notice of appeal and a statement of appeal is included in this packet. You are not required to use the enclosed form. If you use the enclosed form, the entire completed form must be received by DDES within fourteen days February 9, 2011. The DATE OF SERVICE is three business days after the Notice and Order is mailed. FAILURE TO APPEAL WITH THE SPECIFIC REASONS WHY THE NOTICE AND ORDER SHOULD BE REVERSED OR MODIFIED MAY RESULT IN A MOTION TO HAVE THE APPEAL DISMISSED BY THE HEARING EXAMINER. FAILURE TO FILE A TIMELY NOTICE AND STATEMENT OF APPEAL WITHIN THE DEADLINES SET FORTH ABOVE RENDERS THE NOTICE AND ORDER A FINAL DETERMINATION THAT THE CONDITIONS DESCRIBED IN THE NOTICE AND ORDER EXISTED AND CONSTITUTED A CIVIL CODE VIOLATION, AND THAT THE NAMED PARTY IS LIABLE AS A PERSON RESPONSIBLE FOR CODE COMPLIANCE.

DUTY TO NOTIFY (KCC Section 23.24.030N):

The person(s) responsible for code compliance has the DUTY TO NOTIFY the Department of Development and Environmental Services-Land Use Services Division of ANY ACTIONS TAKEN TO ACHIEVE COMPLIANCE WITH THE NOTICE AND ORDER.

DATED THIS JANUARY 21, 2011.



Sheryl Lux
Interim Code Enforcement Supervisor

SL:HS: hs